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Wilbur Harkness Cherry

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WILBUR HARKNESS CHERRY

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Wilbur Harkness Cherry died in Minneapolis, February 21, 1950. Words fail to express the sense of loss felt by the faculty, students and alumni of the Law School of the University of Minnesota when we heard that Wilbur, as he was familiarly known, was gone. His death was so sudden and unexpected that our minds had had no time to become adjusted to the loss of this man who meant so much to us. The privilege of writing this brief account of his life is marred by a sense of inadequacy to do justice to the memory of an unusual man.

Born in Toledo, Ohio, November 28, 1887, he was the son of Dr. and Mrs. William Cherry. His father, a practicing physician in Toledo, was a native of Canada, and a graduate in Medicine from McGill University in Montreal, Quebec. Having been himself educated in Canadian schools, his father sought a similar education for his son and enrolled him in a school of Upper Canada College, Ontario, from 1897 to 1899. There he won a prize for general proficiency. His secondary school training was received in Woodstock College, Ontario, which he attended from 1899 to 1903. There he was a member of the Debating Team, and was graduated with high honors. In 1903 he entered the College of Arts of McGill University where he took a general program of studies which included the following courses: three in English; two in each of English Composition, French, German, and Political Science; and one in each of History, Economics, Latin, Mathematics, Physics, Botany and Zoology, Roman Law, and Constitutional Law. His interest in debate continued and he was a member of the Debating Team. He was elected president of the "Club Francais," a recognition of his fluency in the French language. In 1907, when he was nineteen years of age, McGill conferred on him the degree of Bachelor of Arts with First Rank General standing and awarded

him a Special Certificate in recognition of his rank. He was advised to apply for a Rhodes Scholarship, but declined as he wished to return to the United States.

His legal education began in McGill with courses in Roman Law and Constitutional Law which was continued in the Law School of Columbia University from 1907 to 1910, and there he continued his brilliant educational career. He was a member of the Student Editorial Board for Volumes 9 and 10 of the Columbia Law Review and Secretary of the Board in charge of publishing Volume 10 in his senior year. From Columbia University he received the degree of Bachelor of Laws.

The high promise of his educational record was amply fulfilled in his professional career. He was admitted to the Bar of the State of New York in 1910 and practiced with the firm of Esselstyn and Haughwout in New York City for two years. He moved to Minnesota in 1912, and practiced in Minneapolis until 1925, where he was associated in the later years with George and Guy Carleton, the late Judge Daniel Fish after his retirement from the District Bench, and Paul S. Carroll, now Judge of the District Court. He rapidly won recognition for high probity, sound judgment and special skill in trial work.

But he was destined to spend the greater part of his life in teaching. Upon his graduation from McGill University his instructor in Economics, Professor Stephen Leacock, suggested that he might find his life's work in teaching and recommended him to fill out a term in a boys' school in Canada, but he had already decided on Law as his field. Time proved that both were right. He became both a lawyer and a teacher. In 1914 Dean William R. Vance of the University of Minnesota Law School persuaded him to accept a part-time instructorship in law. He assisted Professor Edmund M. Morgan who developed the course in Procedure, and his success in this work was so marked that three years later when Professor Morgan resigned, he was promoted to a professorship and thereafter carried on the course in Procedure and the Practice Court. He continued to give some time to practice and although his work and reputation in that field were constantly growing, his interest in teaching became more absorbing and in 1925 he gave up his practice and devoted all his time to his work in the Law School. Thereafter he taught the courses on Procedure and Evidence, and conducted the Practice Court to the time of his death. These courses were taken by all students in the Law School and thus every gradu-

ate of the school had the good fortune to study under him. These graduates now comprise a large proportion, perhaps a majority, of the present Bar of Minnesota, and many are members of the Bars of other states.

As a teacher in the field of adjective law he was outstanding. His experience in practice especially qualified him for this work. His mind was penetrating, quick and logical, qualities which made him a master of the Case Method of teaching. He believed that the function of a teacher is to help the student to solve his problems and not to solve them for him. He did not deprive his students of the joy of discovery. He knew that the student develops his powers by his own efforts, and that he retains what he discovers for himself, but is likely to forget what he is told by his teacher. Perhaps his greatest success was in the Practice Court, which has always been a baffling problem in law schools. He made it an instrument of training with such success that it was recognized as unique among law schools. The graduates of the Law School have been unanimous in their testimony as to the value of this training in their later careers.

His services to the Law were not limited to practice and teaching. His counsel was constantly sought and generously given in the formulation of the policies of the Law School. To this task he brought high ideals and sound judgment. He had a high conception of the function of the lawyer, and of the contribution he should make to our human society. He insisted upon high standards for admission to the profession. He believed that it is the duty of lawyers to improve the law and its administration by their individual and collective efforts. This idea he impressed upon the minds of his students by precept and example. Throughout his life he took an active interest in Bar Associations. Early in his career he was one of the group of young lawyers who organized the Hennepin County Bar Association which has won wide recognition for its activities. Later he had a part in the reorganization of the Minnesota State Bar Association, and was a member of its Board of Governors for seventeen years. He was a representative from Minnesota in The House of Delegates of the American Bar Association in 1939. He served on many committees involving much hard work, such as those that drafted the Minnesota Business Corporation Act in 1933, and the Probate Code in 1935, and by his learning and wisdom contributed much to the success of their work. He was Secretary to the Minnesota Crime Com-

mission in 1926-27 and had an important part in getting the recommendations of the Commission enacted by the Legislature. He gave much time to the work of the Legal Aid Society of Minneapolis and was president of the Society at the time of his death. He had a large part in securing the creation of the office of Revisor of Statutes for Minnesota and in the establishment of the Judicial Council for the State.

His reputation and activities extended into the National field. He was appointed by the Supreme Court of the United States a member of its advisory Committee on Rules of Civil Procedure when the Committee was created in 1935 and served on the Committee until his death. In 1939 he was appointed by the American Law Institute as an adviser in the drafting of a Code of Evidence and served until the draft was completed. The Association of American Law Schools made him a member of its Executive Committee, and elected him president for 1939.

While his first interest was in the law, his public service was not restricted to that field. In all his relations he showed an unusual sense of social obligation. His reputation for wise counsel, sound judgment and readiness to help led to his appointment to many All-University Committees. He took a special interest in the work of the American Association of University Professors and contributed much to the good understanding between the faculty and administration for which the University of Minnesota is noted. Another of his active interests was the Campus Club of the faculty for which he had a large part in providing the excellent facilities which the Club now enjoys. Because of rheumatic fever in his childhood, he was ineligible for military service, but he served during World War I in many civilian positions, and in World War II was Compliance Commissioner for the War Production Board for which he refused any financial compensation.

The record tells the quality of the man. Too realistic to trust Utopian dreams, but believing in the possibility of gradually improving the conditions of human society, he gave himself freely to whatever he deemed practical to that end. He was selfless, and interested only in the purpose he sought. His integrity of character impressed those with whom he worked. He encouraged those who did their best, but was intolerant of slothfulness and pretentiousness. Any sign of dishonesty, deceit or trickery was sure to arouse his wrath. He did not measure his work by a narrow standard of duty. He was a friend to his students and freely counselled them on

their personal affairs. Many received financial aid from scholarships provided by him as anonymous gifts. Even after graduation, many of his students had the benefit of his free advice in their early professional efforts. His life was marked by a singleness of purpose. Numerous offers from other schools at higher salaries, and tender of appointments to the Bench were all declined by him. His loyalty to the school may indeed have hastened his death. He was aware of his physical limitations and had planned to retire some time before, but felt that he should remain through the heavy post-war years.

Wilbur Cherry had a genius for friendship and it won him a host of friends. He was admired and beloved by his students, his colleagues in the Law School and in the larger University community. To his professional and social relations he brought a rare sense of humor. In the boys' school of Upper Canada College, he was fortunate to have as one of his teachers Stephen Leacock, and when he went to McGill University he found Leacock there as Professor of Economics. He admired Leacock both as a teacher and humorist and they became fast friends. When any tense situation arose, he was likely to resolve it by quoting Leacock or Mark Twain, whose writings he also enjoyed. He was generous and thoughtful to the end. It was characteristic of him that his will provides for Christmas gifts for the blind man who sold papers on the nearby street corner, and for the employees of the Campus Club and of the Club where he lived. His life contributed to the happiness of many, and the world is a better place because Wilbur Cherry lived in it.

EVERETT FRASER